

PILLSBURY WINTHROP SHAW PITTMAN LLP
WAYNE M. WHITLOCK (SBN 137409)
wayne.whitlock@pillsburylaw.com
2550 Hanover Street
Palo Alto, CA 94304-1115
Telephone: (650) 233-4528
Facsimile: (650) 233-4545

MARK E. ELLIOTT (SBN 157759)
mark.elliott@pillsburylaw.com
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406
Telephone: (213) 488-7100
Facsimile: (213) 629-1033

Attorneys for Defendant
MENDOCINO FOREST PRODUCTS
COMPANY, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE, a non-profit
corporation,

Plaintiff,

MENDOCINO FOREST PRODUCTS COMPANY, LLC

Defendant.

Case No. 3:17-CV-01223 (VC)

**STIPULATION AMENDING CONSENT
AGREEMENT; [PROPOSED] ORDER
THEREON**

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1388)**

Plaintiff California Sportfishing Protection Alliance (“CSPA”) and Defendant Mendocino Forest Products Company, LLC (“MFP”) (collectively the "Parties") in the above-captioned action stipulate and agree to the following Amendment of Consent Agreement.

WHEREAS, CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of California's waters:

1 **WHEREAS**, MFP owns and/or operates an approximately 176-acre facility at 850 Kunzler
2 Ranch Road, in Ukiah, California where it conducts various sawmill and planning mill activities
3 including log storage and handling, milling of lumber, lumber planing, fenceline operations, wood
4 surface protection, lumber drying, lumber storage and shipping, maintenance of the manufacturing
5 and rolling stock equipment and systems, and wood treating (collectively, the “Facility”);

6 **WHEREAS**, CSPA and MFP entered into a Consent Agreement settling CSPA’s
7 allegations of MFP’s non-compliance with the Clean Water Act on November 14, 2017 (“Consent
8 Agreement”); See, ECF Dkt. No. 48.

9 **WHEREAS**, on January 5, 2018 the Court entered an order granting the Parties’ December
10 29, 2017 stipulation to dismiss the action with prejudice under FRCP 41(a)(2), with the Court
11 retaining jurisdiction over the parties for the purpose of resolving any disputes between the Parties
12 with respect to enforcement of any provision of the Consent Agreement until November 30, 2020,
13 ECF Dkt. No. 48;

14 **WHEREAS**, Paragraph I.2 of the Consent Agreement set forth commitments of MFP,
15 including the implementation of numerous Best Management Practices (“BMPs”) intended to
16 eliminate or reduce pollutants in MFP’s storm water discharges to the Russian River;

17 **WHEREAS**, during implementation of those BMPs, MFP notified CSPA that certain
18 changes were necessary due to circumstances beyond MFP’s control that it encountered when
19 work began on the original BMPs. In addition, MFP notified MFP of certain other changes that
20 would be operationally superior for Facility storm water management. CSPA has fully reviewed
21 and concurred with these changes, and the Parties have agreed to incorporate them into this
22 Stipulation Amending Consent Agreement¹;

23 **WHEREAS**, on October 1, 2018, MFP provided CSPA with a memorandum
24 memorializing its Level 1 Exceedance Response Action (“ERA”) Evaluation for Total Suspended

25
26 ¹ While this stipulation changes the BMPs that will be implemented in certain drainage areas in
27 2018, it does not amend the implementation deadlines, which remain October 1, 2018 as per the
original Consent Agreement.

1 Solids as required by Section XII.C.1 of the Revised General Permit. BMPs added to the MFP
2 Facility's Stormwater Pollution Prevention Plan ("SWPPP") pursuant to the Level 1 ERA
3 Evaluation necessitate changes in the SWPPP Site Map. The Parties have agreed to incorporate
4 conforming changes to **Exhibit A, 2018 Facility Map** and other applicable Consent Agreement
5 Exhibits in this Stipulation Amending Consent Agreement ("Stipulated Amendment"); and

6 **WHEREAS**, Paragraph 28 of the Consent Agreement provides that it may be amended
7 only by a writing signed by the Parties or their authorized representatives; and,

8 **WHEREAS**, within five (5) calendar days of mutual execution, this Agreement shall be
9 submitted to the Attorney General, United States Department of Justice, Citizen Suit Coordinator
10 and the Administrator, Environmental Protection Agency, for the 45-day statutory review period,
11 pursuant to 33 U.S.C. § 1365(c).

12

13 **NOW, THEREFORE, THE PARTIES STIPULATE AS FOLLOWS:**

14 1. Paragraph I.2(o) of the Consent Agreement is replaced by the following:

15 (o) *Drainage Areas 008, 019 and 022.* The DPs for 008, 019 and 022 shall remain
16 separate and sampled at their current location for the 2017-2018 Reporting Year. On or
17 before October 1, 2018, MFP shall combine DAs 008 and 022, and all storm water from
18 former DA 008 shall be routed to and sampled at DP 022. Drainage Area 019 shall remain
19 separate and sampled at DP 019.

20

21 2. Paragraph I.2(q) of the Consent Agreement is replaced by the following:

22 **Drainage Area 022**

23 (q) *Construction of New Northern Infiltration BMP in DA 022.* On or before
24 October 1, 2018, MFP shall construct a new infiltration BMP adjacent to the north end of DA
25 022 (formerly DA 008). See **Exhibit A, 2018 Facility Map** for location of the northern
26 infiltration BMP and **Exhibit C, Infiltration BMPs Dimensions Table** for approximate
27 dimensions. MFP shall prepare construction drawings for this infiltration BMP (formerly DA

1 008 Infiltration BMP), with a level of detail similar to those as-built drawings prepared under
2 Paragraph I.2(l), above, and provide them to CSPA by June 1, 2018 pursuant to the notice
3 provisions below. The northern infiltration BMP shall connect to an existing infiltration BMP
4 in DA 022 (the southern infiltration BMP), and excess storm water, if any, shall discharge via
5 DP 022. See **Exhibit A, 2018 Facility Map**.

6

7 3. Paragraphs I.2(t)-(x) of the Consent Agreement are replaced by the following:

8 (t) *Combination of Drainage Areas 008 and 022.* On or before October 1, 2018,
9 MFP shall combine DAs 008 and 022 as described in Paragraph I.2(o) by connecting the two
10 infiltration BMPs located within these drainage areas. See **Exhibit A, 2018 Facility Map**.

11 (u) [Removed]

12 (v) *Installation of Berms Along Hensley Creek.* On or before October 1, 2018,
13 MFP shall add berms along Hensley Creek as needed to direct all sheet flow to the infiltration
14 BMPs discussed in (q) above. See **Exhibit A, 2018 Facility Map**.

15 (w) *Reestablishment of Discharge Point 022.* On or before October 1, 2018, MFP
16 shall relocate and reestablish DP 022 at the existing infiltration BMP in DA 022 (the southern
17 infiltration BMP described in item (q) above) and reconfigure berms as necessary to direct
18 sheet flow to the infiltration BMP. See **Exhibit A, 2018 Facility Map**.

19 (x) [Removed]

20

21 4. Paragraphs I.2(ee)-(gg) of the Consent Agreement are replaced by the following:

22 (ee) *Combination of Drainage Areas 001 and 017.* On or before October 1, 2018,
23 MFP shall regrade as needed to combine DAs 001 and 017. MFP shall route storm water
24 from existing DAs 001 and 017 under the railroad to the new DA 024 RR-East Infiltration
25 BMP. See **Exhibit A, 2018 Facility Map**.

26 (ff) *Construction of Drainage Area 024 RR-East Infiltration BMP.* On or before
27 October 1, 2018, MFP shall construct a new infiltration BMP located between the railroad

1 tracks and DAs 015 and 016.

2 (gg) *Rerouting of Storm water Flows from DAs 001 and 017.* On or before October
3 1, 2018, MFP shall reroute drainage from the new DA 024 RR-East Infiltration BMP to the
4 East Field Infiltration BMP for further infiltration and ultimate discharge at DP 024. When
5 this reconfiguration is complete, DAs 001 and 017 will become part of DA 024. See **Exhibit**
6 **A, 2018 Facility Map** for the locations and **Exhibit C, Infiltration BMPs Dimensions**
7 **Table** for the approximate dimensions of these BMPs.

8
9 5. **Exhibit A, 2018 Facility Site Map; Exhibit C, Infiltration BMPs Dimensions**
10 **Table, and Exhibit H, Sampling Parameters** of the Consent Agreement are replaced by the
11 attached **Exhibits A, C and H** of the same titles; each replacement exhibit has been updated for
12 consistency with the changes described herein.

13
14 6. Separate from the reimbursement of attorneys' fees as provided for in Paragraph 12 in
15 the Consent Agreement and, without revising or amending the same, MFP agrees to reimburse
16 CSPA in the amount of \$6,000 to defray CSPA's reasonable investigative, expert, consultant, and
17 attorneys' fees and costs, and all other costs incurred as a result of negotiating this Addendum. Such
18 payment shall be made payable to the "Law Offices of Andrew L. Packard Attorney Client Trust
19 Account" and remitted to the firm within ten (10) day of the Parties' filing of this Stipulated
20 Amendment.

21
22 7. All other terms of the Consent Agreement and other Exhibits thereto remain in full
23 force and effect.

1 IT IS SO STIPULATED.

2 Dated: October 31, 2018

Respectfully submitted,

3 LAW OFFICES OF ANDREW L. PACKARD



4
5 Andrew L. Packard

6 Attorneys for Plaintiff
7 California Sportfishing Protection Alliance

8 Dated: October 31, 2018

9 PILLSBURY WINTHROP SHAW PITTMAN LLP



10
11 Wayne M. Whitlock
12 Attorneys for Defendant
13 Mendocino Forest Products Company, LLC

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2 PURSUANT TO STIPULATION, IT IS SO ORDERED.
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4 DATED: February 11, 2019
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The Honorable _____
United States District Judge

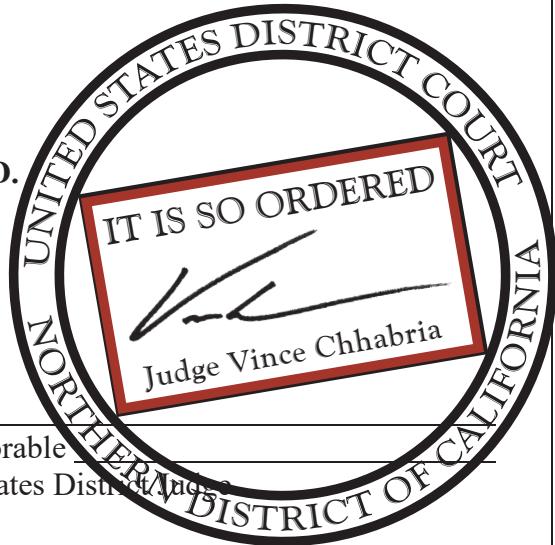


EXHIBIT A – 2018 Facility Map

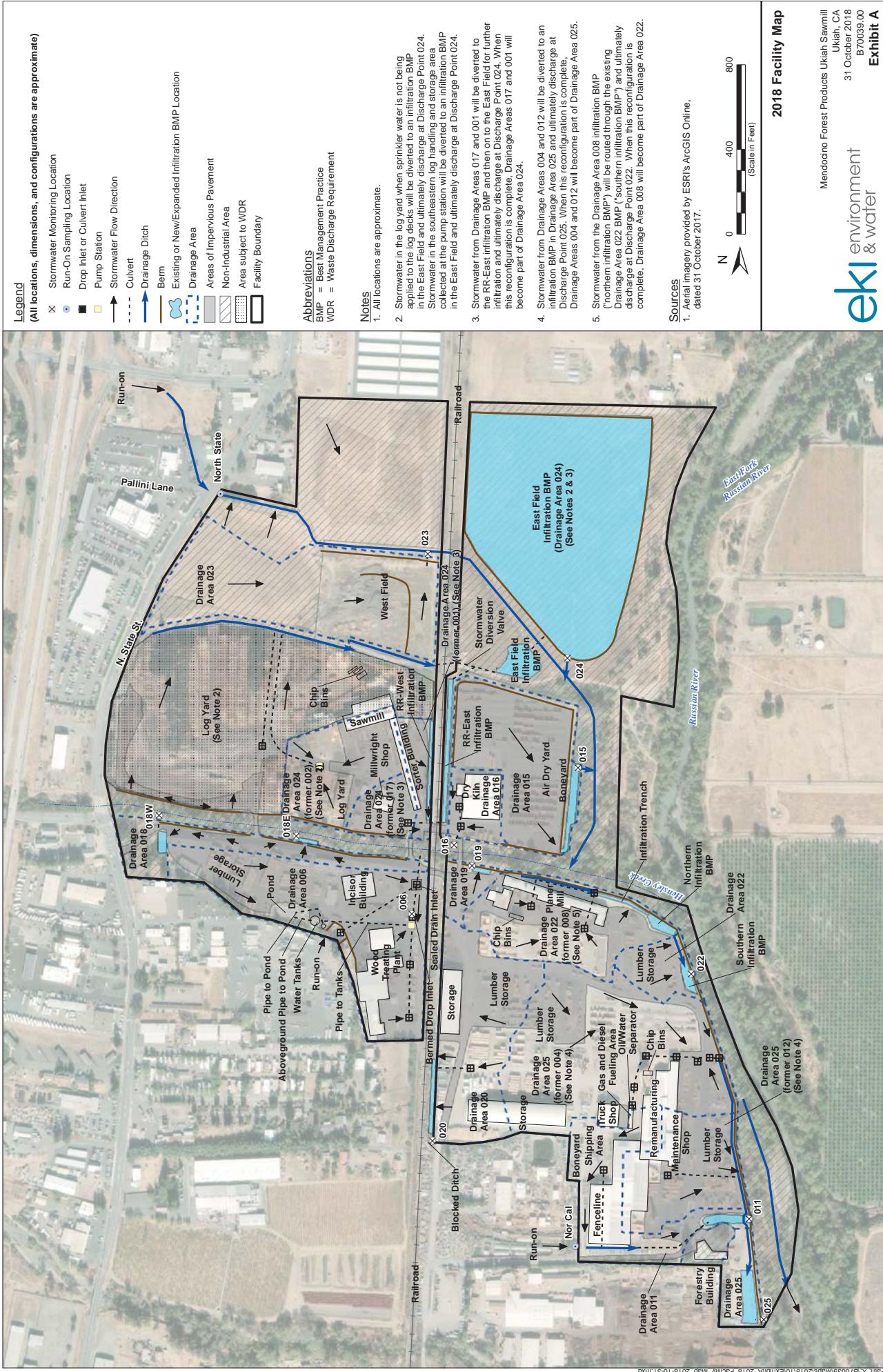


EXHIBIT C – Infiltration BMPs Dimensions Table

Exhibit C - Infiltration BMPs Dimensions Table
Mendocino Forest Products - Ukiah Sawmill, Ukiah, California

Drainage Area Name	Total Area Acres	Impervious Area		Pervious Area		Pervious Area Predominant Soil Types (1)				New/Expanded Infiltration BMP Dimensions		Percolation Rate (minutes/inch)
		Percent	Acres	Percent	Acres	Urban Land (2)	Coal Loam	Russian Loam	Xerofluvents Riverwash Complex	Area	Depth (ft)	
former 008 (includes Northern Infiltration BMP) (3)	7.2	52%	3.7	48%	3.5	72%	4%	8%	--	6,900 sq ft	6.5	25.1
Combined 022 (includes former 008 Drainage Area)	9.0	58%	5.2	42%	3.8	71%	4%	7%	--	3,400 sq ft (4)	4	25.1
011	6.9	50%	3.4	50%	3.4	98%	--	--	--	4,400 sq ft	7	20.9
015	8.1	89%	7.2	11%	0.9	--	16%	84%	--	8,800 sq ft	9	125.4
018E	1.4	96%	1.3	4%	0.1	79%	21%	--	--	1,200 sq ft	3	27.8
018W	2.3	39%	0.9	61%	1.4	100%	--	--	--	1,400 sq ft	5	20.9
019	1.1	80%	0.9	20%	0.2	3%	97%	--	--	800 sq ft	3	41.8
former 001 (includes RR-West Infiltration BMP) (3)	1.5	73%	1.1	27%	0.4	29%	71%	--	--	4,200 sq ft	1	35.5
former 017 (3)	1.7	96%	1.6	4%	0.1	100%	--	--	--	--	--	--
former 002 (3)	5.1	44%	2.3	56%	2.9	100%	--	--	--	--	--	--
Log Yard (3)	21.7	9%	2.0	91%	19.7	100%	--	--	--	--	--	--
RR-East Infiltration BMP (3)(5)	0.6	6%	0.03	94%	0.6	--	100%	--	--	10,400 sq ft	4.5	--
East Field Infiltration BMP (3)	18.8	0%	0.0	100%	18.8	--	2%	98%	--	18.8 acres	3	25.1
Combined 024 (includes former 001, former 017, former 002, Log Yard, RR-East Infiltration BMP and East Field Infiltration BMP Drainage Areas)	49.4	14%	7.0	86%	42.4	54%	3%	44%	--	--	--	31.4
former 004 (3)	14.7	43%	6.3	57%	8.4	100%	--	--	--	--	--	--
former 012 (3)	5.7	94%	5.4	6%	0.3	92%	--	--	--	8%	--	--
Combined 025 (includes former 004 and former 012 Drainage Areas)	22.1	53%	11.6	47%	10.5	85%	--	--	12%	10,460 sq ft	7.5	41.8

Abbreviations:

-- = not applicable

BMP = best management practice

sq ft = square feet

Notes:

- Soil types for pervious areas were determined based on the USDA's Web Soil Survey website (<https://websoilsurvey.sc.egov.usda.gov/>) for Mendocino County, Eastern Part and Southwestern Part of Trinity County, California.
- Urban and does not have a predominant soil type provided in the USDA's Web Soil Survey data. The predominant non-urban soil type in the vicinity is Russian Loam (or Cole Loam, if the East Field Infiltration BMP is excluded).
- Shaded drainage areas are incorporated into the combined areas and predominant soil types shown below the shading.
- Area represents the southern infiltration BMP. The total area of the northern and southern infiltration BMPs and infiltration trench in Drainage Area 022 is approximately 11,300 sq ft.
- Includes area adjacent to the RR-East infiltration BMP that drains to the infiltration BMP.

EXHIBIT H – Sampling Parameters

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3 **EXHIBIT H – Sampling Parameters**

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Parameter	NAL Value
pH (Field test)	6.0-9.0 s.u.
Total Suspended Solids	100 mg/L
Oil & Grease	15 mg/L
Zinc	0.26 mg/L
Copper (DA 006 only)	0.0332 mg/L
Propiconazole* (at DP 006, 011, 022 and 025 only)	N/A
Chemical Oxygen Demand	120 mg/L
Dioxin** (at DP 022 and 023 only)	N/A

16 *This parameter may be eliminated from the sampling required under this Agreement as
17 follows. In the event that four consecutive samples at a given discharge point are “non-
18 detects” for the parameter at issue, sampling for that parameter at that Discharge Point may be
19 discontinued.

20 ** The term ‘dioxins’ as used in this Agreement refers to the total toxic equivalency (TEQ),
21 calculated using the 2005 World Health Organization toxic equivalency factors (TEFs),
22 adopted by the California Office of Environmental Health Hazard Assessment in 2011, of 17
23 specific chlorinated dibenzodioxins and chlorinated dibenzofurans analyzed using US EPA
24 Method 1613. This parameter may be eliminated from the sampling required under this
25 Agreement in the event that two consecutive samples at the specified discharge point(s) have
26 values less than or equal to samples taken concurrently from the Russian River upstream of the
27 discharge and within 200 yards of the Facility.